IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

SUNDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND THREE

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

-

WRIT PETITION No.8900 of 2004

Between:

K. Krishna Prasad S/o. K. Prabhakar Rao,
Road No.2, Banjarahills, rep. by its

G.P.A. Holder P.R.N.Togore, Director,

Capstone Estate Developers Pvt., Ltd.,

Erramanzil, Hyderabad.

..... PETITIONER

AND

1 Serilingampally Municipality, rep. by its Commissioner,
Cyberabad, R.R.Distriact.
2 Hyderabad Urban Development Authority, rep. by its Vice Chairman,
Begumpet, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the impugned proceedings of the respondents No.1 and 2 bearing P.O.No. G/26/UC/MCS/7705/2004 Dt. 16.3.2004 and NO. 2530/MP2/HUDA/Plg./97 Dt. 5.5.2004 respectively as illegal, null and void and against principles of natural justice.

Counsel for the Petitioner: MR.M.S.PRASAD

Counsel for the Respondent No.1: MR. R. TIMMA REDDY, STANDING

COUNSEL

Counsel for the Respondent No.2: MR. S. SATHYAM REDDY, STANDING COUNSEL

The Court made the following:

ORDER:

The petitioner herein is owner of Plot No.1 in Survey No.13/A admeasuring 773 Sq. yards of Kondapur village in Serilingampally Mandal of Ranga Reddy District. He entered into a deveopment agreement with M/s. Capstone Estate Developers Pvt. Ltd., Erramanzil, Hyderabad for the purpose of constructing a multi storied building consisting stilt + 5 floors. The petitioner made an application to the first respondent, who by Proceedings dated 6.11.2003 granted permission. When the petitioner is about to complete the construction work, the first respondent issued a notice/proceedings dated 16.3.2004 purporting to be under Section 217, 228 (1) and 228 (2) of the Andhra Pradesh Municipalities Act, 1965 ('the Act' for brevity) and Sections 42 (1) and 43 (1) of the Andhra Pradesh Urban Areas (Development) Act, 1975 (the Act, for brevity) calling upon the petitioner to remove the unauthorized construction made by the petitioner. The unauthorized construction or deviations are shown in the brief explanation of "unauthorised construction" which is at the end of the proceedings dated 16.3.2004. Be that as it is, as the petitioner failed to submit the explanation, the first respondent again issued a show cause notice No.2530/MP2/HUDA/Plg./97, dated 5.5.2004 calling upon the petitioner to show cause as to why any action should not be taken under Section 42 of the Act. The petitioner was asked to submit explanation on or before 10.5.2004. The petitioner without submitting explanation approached this Court. This Court while admitting the writ petition on 7.5.2004 stayed demolition of the construction made by the petitioner.

The writ petition came at interlocutory stage for further orders on 1.9.2004. This Court having regard to the contention of the petitioner, directed the learned Standing Counsel for Municipality to file counter. Today, a counter affidavit is filed. The matter was heard finally with the consent of the learned Counsel for the parties.

A reading of the provisional order dated 10.3.2004 as well as show cause notice dated 5.5.2004 would show that the Municipality has followed the procedure contemplated under the Act especially Sections 217 and 228 of the Act. Though the learned counsel for the petitioner raised various contentions, this Court is not inclined to go into these contentions at this stage, since what is challenged in the show cause notice. The authority and power of first respondent to initiate action under Sections 217 and 228 (1) of the Act is not disputed. Therefore, the writ petition against a show cause notice does not lie. Indeed in the counter affidavit, it is stated that the petitioner made constructions in deviation of the sanctioned plan, and therefore, the show cause notice under Sections 217 and 228 of the Act was issued.

In view of the above reasons, the writ petition is disposed of, giving liberty to the petitioner to submit explanation within a period of two weeks from the date of receipt of a copy of this order. Till the explanation is considered and appropriate final orders are passed under Section 228 (3) of the Act, no coercive steps shall be taken against the petitioner. If any adverse order is passed by the Commissioner, it shall be open to the petitioner to file appeal before Municipal Council under Section 345 of the Act. No order as to costs.

_____

September 7, 2004. (**V.V.S. RAO, J**)

YS

Note:

Office to dispatch

copy in Three days.

(B/o)

YS

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Comissioner, Serilingampally Municipality,

Cybderabad, Ranga Reddy District.

2 The Vice Chairment, Hyderabad Urban Development

Authority, Begumpet, Hyderabad.

3 Two C.D. copies.